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10 Attorneys for Defendant VIZIO, INC.

11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA

14 SONY CORPORATION, a
15 Japanese corporation,

16 Plaintiff,

17 v.

18 VIZIO, INC., a California
corporation,

19 Defendant.

Case No. SA CV 08-01135-RGK (FMOx)

**DECLARATION OF JAMES L.
WAMSLEY, III IN SUPPORT OF
VIZIO'S REPLY IN SUPPORT OF ITS
MOTION TO FILE ITS PROPOSED
AMENDED ANSWER, AFFIRMATIVE
DEFENSES AND COUNTERCLAIMS**

Date: May 18, 2009
Time: 9:00 a.m.
Judge: Hon. R. Gary Klausner
Courtroom: 850

1 I, James L. Wamsley, III, declare as follows:

2 1. I am a partner in the Cleveland office of Jones Day, counsel of record
3 for Defendant Vizio, Inc. in this action. I have been admitted *pro hac vice* in this
4 litigation. I make this declaration in support of Vizio's Reply in support of its
5 Motion to Amend its Answer, Affirmative Defenses and Counterclaims to Sony's
6 Amended Complaint. The following is based on my personal knowledge and, if
7 called as a witness, I could and would competently testify thereto.

8 2. As counsel for Vizio, I have participated in a series of meetings since
9 August, 2008 with representatives from Sony Corporation, Sony Corporation of
10 America and Sony Electronics, Inc. to discuss a possible license agreement under
11 which Sony and Vizio would cross-license each other under patents relating to
12 digital televisions.

13 3. In recent meetings and phone conversations with Jaime Siegel, Senior
14 IP Counsel for Sony, I repeatedly requested that Sony agree to exclude from the
15 potential cross-license Vizio patents relating to standards, since Sony was itself
16 insisting on excluding those types of Sony patents from the scope of the proposed
17 license. Sony refused this request each time I made it.

18 4. Due to Sony's refusal to agree that these Vizio patents could be
19 excluded from the proposed cross-license agreement, I telephoned Mr. Siegel on
20 April 12, 2009 to inform him that Vizio had acquired some patents from Motorola
21 that it believed were quite valuable and wanted to have a further meeting with Sony
22 to discuss the patents. Mr. Siegel asked me to identify the Vizio patents in advance,
23 and I told him that I would need to discuss that with Vizio. I raised the prospect of
24 a standstill agreement of non-specific duration with Mr. Siegel during that call, but
25 no agreement was reached during that phone conversation, which concluded with
26 me indicating that I would call him again in the next day or two.

27 5. I telephoned Mr. Siegel again the morning of April 14, 2009 to raise
28

1 the same subject, inquiring if Sony would agree to meet with Vizio to permit Vizio
2 to make a presentation about its patents, and in that context proposed a standstill
3 agreement. Mr. Siegel did not accept my proposal, declining to commit to have a
4 meeting, and requesting instead that I send him an identification of the Vizio
5 patents. Because Mr. Siegel had not agreed to the meeting I had proposed, there
6 was no meeting of the minds and no standstill agreement was formed, and I did not
7 follow up that call by identifying the Vizio patents at that time.

8 6. Later on that same day (April 14), I telephoned Ed DeFranco, one of
9 Sony's outside counsel responsible for this case, to meet and confer with him and
10 seek his consent to a Vizio motion to amend its answer to assert counterclaims for
11 infringement of Vizio's patents. I explained that we needed to confer with Sony on
12 this subject in order to comply with the Court's Order setting an April 21, 2009
13 deadline for filing motions to amend pleadings and add parties. Mr. DeFranco
14 listened to my request and indicated that he would confer with his side and get back
15 to me.

16 7. A short time later on April 14, I received a call instead from Mr. Siegel
17 to discuss this subject. At the outset of that call, Mr. Siegel accused me of violating
18 a standstill agreement, and I immediately responded by telling him that no such
19 agreement had been reached because he had not agreed to my proposal to meet with
20 Vizio. With regard to Vizio's proposed motion, Mr. Siegel indicated that he neither
21 consented nor refused to consent at that time, asking that Vizio provide a copy of its
22 proposed amended pleading and/or identify the Vizio patents. When I asked him if
23 he would agree that Sony would refrain from filing a declaratory judgment action
24 against Vizio if I identified the patents, Mr. Siegel refused.

25 8. Based on my conversations with Mr. Siegel and experience with Sony,
26 I believed that Sony would file a declaratory judgment action in another jurisdiction
27 if I identified the Vizio patents. When Vizio filed on October 10, 2008 in the
28 District of New Jersey its complaint against Sony seeking, *inter alia*, a declaratory

1 judgment of noninfringement and invalidity for twelve Sony patents, I telephoned
2 Mr. Siegel that same afternoon as a courtesy and sent him courtesy copies of the
3 complaint. Sony responded to that courtesy by filing its complaint in this Court
4 alleging Vizio's infringement of the same Sony patents later that same day. In
5 addition, a declaration filed by Mr. Siegel in another case confirms that Sony and
6 Sony Electronics filed a declaratory judgment action in the Northern District of
7 California against AmTRAN Technology Co., Ltd. (one of Vizio's major suppliers)
8 within three days after a meeting in Tokyo in which AmTRAN had identified
9 several of its patents to Sony. (*Sony Corp. and Sony Electronics, Inc. v AmTRAN*
10 *Tech., Co., Ltd.*, Case No. 5:08-cv-05706-JF, N.D. Cal.).

11 9. I am personally aware of at least two recent patent infringement
12 lawsuits against Sony that name all three related Sony entities: Sony Corp., Sony
13 Corp. of America and Sony Electronics Inc. The cases are *Eastman Kodak Co. v.*
14 *Sony Corp.*; *Sony Corp. of America, Sony Electronics Inc., et al.*, Case No. 04-CV-
15 6095T, D.C. N.Y. and *AmTRAN Tech. Co., Ltd. v. Funai Corp., Sony Corp. Inc.*,
16 *Sony Corp. and Sony Electronics Inc.*, No. 3:08-cv-00740-bbc, D.C. of Wis.

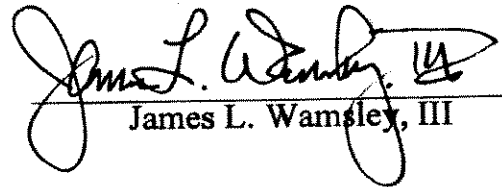
17 10. Both the Sony and Vizio patents relate to the decoding of digital video
18 data for display. For example, Sony patent Re 40,468 relates to the decrypting of
19 video data so that it can be displayed. (*See, e.g.*, '468 Pat. at Claim 41, 26:19-21
20 (claiming a "display apparatus for displaying a video image comprising...a
21 decryptor for decrypting said received encrypted digital video data...")). The Vizio
22 patents relate to the decoding of data that has been digitally modulated for
23 transmission over a cable television network so that it may be displayed.
24 Furthermore, Sony is asserting U.S. Pat. No. 6,661,472, entitled "Channel Selection
25 in Digital Television," against Vizio in the present action. The patent discloses, and
26 claims, "a tuner" to "tune to a physical channel to supply a signal carried on the
27 physical channel to a display." ('472 Pat. at 10:9-11.)

28 11. Fact discovery in this litigation is underway but still is in its early

1 stages. There have been no depositions taken, no protective order has been entered,
2 and the parties have only responded to the first round of interrogatories and
3 document requests. Sony has just begun to produce documents and its production
4 consists largely of Vizio's own publicly-available product manuals. Sony has yet
5 to produce any documents of its own other than copies of the patents and their file
6 histories. No third party confidential documents have yet been produced.

7 I declare under the penalty of perjury under the laws of the United States that
8 the foregoing is true and correct.

9 Dated this 11th day of May, 2009.

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11 
12 James L. Wamsley, III

13 Attorneys for Defendant VIZIO, INC.
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1 **PROOF OF SERVICE**

2 I, Linnea Kempf, declare:

3 I am a citizen of the United States and employed in Los Angeles County,
4 California. I am over the age of eighteen years and not a party to the within-entitled
5 action. My business address is 555 South Flower Street, 50th Floor, Los Angeles,
6 California 90071. On May 11, 2009, I served a copy of the within document(s):

7 **DECLARATION OF JAMES L. WAMSLEY III IN SUPPORT OF**
8 **VIZIO'S REPLY IN SUPPORT OF ITS MOTION TO FILE ITS**
9 **PROPOSED AMENDED ANSWER, AFFIRMATIVE DEFENSES AND**
10 **COUNTERCLAIMS**

11 by transmitting via e-mail or electronic transmission the document(s) listed above.

12 I am familiar with the United States District Court, Central District of
13 California, Western Division's practice for collecting and processing electronic
14 filings. Under that practice, documents are electronically filed with the court. The
15 court's CM/ECF system will generate a Notice of Electronic Filing (NEF) to the
16 filing party, the assigned judge, and any registered users in the case. The NEF will
17 constitute service of the document. Registration as a CM/ECF user constitutes
18 consent to electronic service through the court's transmission facilities. Under said
19 practice, the following CM/ECF users were served:

20 Kevin P.B. Johnson, Esq.
Quinn Emanuel Urquhart Oliver & Hedges
555 Twin Dolphin Drive, Suite 560
Redwood Shores, CA 94065

kevinjohnson@quinnemanuel.com

21 Steven M. Anderson, Esq.
22 Rory S. Miller, Esq.
Quinn Emanuel Urquhart Oliver & Hedges
865 South Figueroa St., 10th Floor
23 Los Angeles, CA 90017

stevenanderson@quinnemanuel.com
rorymiller@quinnemanuel.com

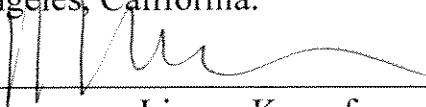
24 On May 11, 2009, I also served a courtesy copy, pursuant to the agreement
25 between the parties, by e-mail to opposing counsel at:

26 sony-vizio@quinnemanuel.com

27 I declare that I am employed in the office of a member of the bar of this court
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1 at whose direction the service was made.

2 Executed on May 11, 2009, at Los Angeles, California.

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4 Linnea Kempf

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